

# *Seales v Attorney-General* (2015) - vulnerability

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# Assumptions of vulnerability

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“In New Zealand ... all branches of government must be vigilant to protect the vulnerable in society. It is, however, important to ensure that medical judgements are not based upon assumptions as to vulnerability.”

[80] per Collins J

# Construction of vulnerability

(Debbie Hagar, AUT)

- Context of disabled women
  - dis/abled women socially constructed as vulnerable
  - abuse seen as inevitable rather than preventable
  - this affects the policy reaction to abuse making it more likely to occur and women more vulnerable
- Context of euthanasia
  - people who want to end their life socially constructed as vulnerable
  - results in a restriction of their autonomy
  - puts them under control/authority of others
  - this makes them vulnerable

# What is vulnerability?

- Oxford English Dictionary Online:
  - “exposed to the possibility of being attacked or harmed either physically or emotionally”
  - “(Of a person) in need of special care, support, or protection because of age, disability or risk of abuse or neglect”
- Crimes Act 1961, s2(1)

“for the purposes of sections 151, 195 and 195A, means a person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person.”

# Vulnerability as an elusive concept

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- Difficult to define
  - (medical) experts disagree
- Difficult to diagnose
  - form of cognitive impairment
  - not clear whether cognitive impairment produces vulnerability or is produced by vulnerability

# Senses of vulnerability

- “induced to commit suicide at a time of weakness” (*Carter v Canada*)
- “those who feel their lives are worthless or that they are a burden to society” (*R (Nicklinson) v Ministry of Justice*)
- “not in a position to make informed decisions” (*Pretty v UK*)

# Was LS ‘vulnerable’?

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- Circumstantial dependence on others – a *potential* risk of abuse
  - But:
    - No evidence of abuse or neglect
    - Not a momentary weakness
    - No evidence of cognitive impairment
    - LS maintained that she was not vulnerable
  - “Ms Seales’ application for the declarations she seeks is a rational and intellectually rigorous response to her circumstances.”  
[81] per Collins J

# Euthanasia and vulnerability

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- Is *protection of* the vulnerable an appropriate aim for the law?
  - Should protection of the vulnerable override autonomy as a value promoted by the law?
  - Does the law overreach in seeking to protect the vulnerable?
  - Is it possible to regulate so as to distinguish those who are at risk from those who are not?
  - Is it discriminatory to label people as ‘vulnerable’?